

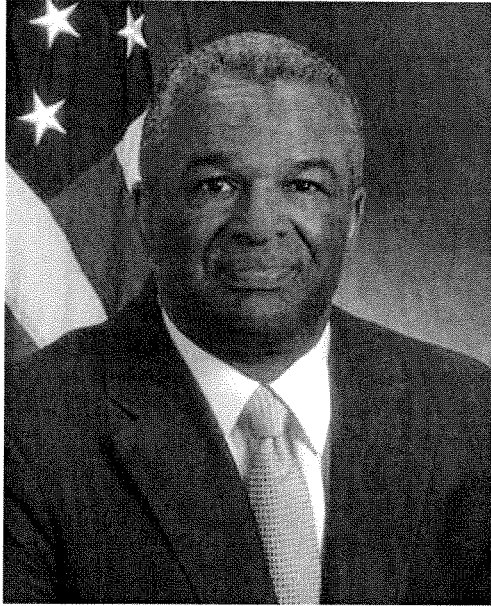


City Hall Had Better Look Over Its Shoulder Because HUD Is Ready To Kick Some Fair-Housing Butt.

By Jim Schutze

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Courtesy HUD



When Deputy HUD Secretary Ron Sims talks about cities that haven't spent their HUD money the right way, he uses phrases like "hold people's feet to the fire." OUCH!

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Just sitting here drumming my fingers on the desk. It's been six weeks. I asked City Hall a simple question. I'm still waiting for their call. This is starting to remind me of my teenage dating career.

My question to the city six long weeks ago was this: How many guaranteed low-/moderate-income housing units have been created downtown?

Six weeks. Radio silence. They're busy giving me the old cold stare treatment. But I'm looking over their shoulders, and I see somebody very large coming up behind them. He keeps repeating my favorite wisdom:

"Fee fi fo fum."

Sure, go ahead. Ignore me, City Hall people. I don't think you're gonna ignore Mr. Fee Fi, otherwise known as "The Administration," for very long.

So who am I, Mr. Affordable? Not really, not especially. I like the idea. But I wish government-sponsored affordable housing programs didn't always turn out to be so scammy.

And that's my real interest. I'm trying to figure out whether Dallas City Hall has scammed the U.S. Department of Housing and Urban Development out of hundreds of millions of dollars over the years by submitting what the law calls "false claims."

Fair housing isn't really at the heart of this for me. The meat of the issue facing City Hall downtown right now, thanks to a formal complaint made to HUD by two Dallas developers earlier this year, is the question of false claims.

Here's why it's so simple. HUD gives money to cities every year under four grant programs, the main one being community development block grants (CDBG). Dallas gets about \$35 million a year from HUD and spreads the money around all over town. For the last decade or more a good deal of the CDBG money has been poured into downtown, where the city has been struggling to convert a moribund office center into an enclave of yuppie high-rise apartments.

In order to get this money, Dallas must "certify" or swear to the feds every year that it is using the money to "affirmatively further fair housing" and that it has carried out certain legally prescribed

procedures toward that end.

For example, the city has to certify that it has studied all of the things that could stand in the way of the creation of fair and affordable housing and that it has developed strategies for getting past those hurdles. At the top of that list would be making sure the city itself is not putting up the hurdles.

If the city swears it has carried out that step when it has not carried out that step, then it has made a false claim in seeking payment from the federal government—a crime since Abraham Lincoln persuaded Congress to make it a crime during the Civil War.

HUD regulations call for developers who use HUD money to produce buildings in which 51 percent or more of the units are offered at rents affordable to people of low to moderate income, according to HUD standards. The city can seek waivers of that requirement. But the waiver can't be based on a false premise—like the city saying there is no way to do a deal if it has to meet the regs when the real reason is that the city doesn't want to meet the regs.

Developers Curtis Locky and Craig MacKenzie have told HUD that the downtown Dallas tower conversions financed with loans backed by CDBG money have not met the 51 percent rule. They claim the amount of affordable housing in most of these projects is zero. They say Dallas has not done the due diligence it claims to have done in its annual certifications to HUD and that in fact its own policies work against compliance with HUD requirements.

So who are Locky and MacKenzie, some kind of freelance affordable housing angels? I'll try to explain their motivation later. But for now, Locky and MacKenzie are developers with solid track records in this city and elsewhere who had a deal to redevelop the old LTV office tower at 1600 Pacific Ave. into an apartment building. I wrote a column about them May 6.

Locky and Mackenzie thought they had the financing locked up for the LTV Tower deal—a total of about \$112 million, including \$19.5 million in a loan from the city for which the city would pledge its CDBG money as collateral. Because CDBG money was involved, Locky and MacKenzie came in originally with a plan that would have included 51 percent "affordable" units, according to the standards set by HUD.

They have provided HUD with what they say is evidence that City Hall beat them up for proposing that much affordable housing and eventually gutted their deal. In fact they have shown HUD—and me—document after document in which the city states more or less explicitly that it doesn't want anybody to do that much affordable housing downtown.

Here is where we get to *fee fi fo fum*. How could the city get away with telling people not to meet HUD guidelines while it was certifying to HUD every year that it was "affirmatively furthering" HUD guidelines?

Easy. The same way coal-powered generating plants and deep-water off-shore rigs and unemployment insurance departments got away with flouting federal regulations for a long time. There used to be a different sheriff in the White House. I refer to the guy who rides his dirt-bike around Dallas now.

Every year on every HUD-financed downtown housing project, Dallas applied for waivers from the federal guidelines for downtown projects. And got them. And before I blame all of that too much on Mr. Dirt Bike, the downtown Dallas waivers actually go back to the Clinton years when Andrew Cuomo was Secretary of HUD.

So doesn't that let Dallas City Hall off the hook? They asked for waivers. They got them. End of story? No, Morning Glory. Not the end at all. Fee fi fo fum. There's a new sheriff in town, and here he comes.

In September of last year Westchester County, Connecticut, settled a lawsuit by agreeing to spend \$50 million on new "fair housing" units—the penalty for years of false claims to HUD that it was affirmatively furthering fair housing. The judge in that case said it didn't make any difference that Westchester's applications for funds had been approved by HUD over the years, because the applications were based on false claims.

In their complaint to HUD, Lockey and MacKenzie claim that Dallas is guilty of "a longstanding pattern of discriminatory practices that deliberately relegate low- and moderate-income families to live in existing predominantly minority low-/moderate-income neighborhoods, particularly in the Southern Sector, and a failure to encourage creation of a wide spectrum of housing opportunities."

They want HUD to look at all of Dallas' past waiver requests downtown as evidence of a larger pattern of false claims, whether HUD granted the specific waivers or not. And under the new sheriff, HUD may be quite open to that idea. Even enthusiastic.

Ron Sims, deputy secretary of HUD, hailed the outcome in Westchester County: "This is consistent with the president's desire to see a fully integrated society," he said. "Until now, we tended to lay dormant. This is historic, because we are going to hold people's feet to the fire."

Fee.

In fact, Sims himself helped broker the conciliation agreement in Westchester. Michael Allen, an attorney with Relman and Dane in Washington who represented the plaintiffs, told me the suit had been in litigation for three and a half years until HUD stepped in last year and kicked it up a notch.

Fi.

Allen says the Westchester case "signals HUD's strong interest in enforcing these affirmatively furthering obligations in a way they had not been before." But how would HUD do that?

Simple, Allen says. HUD's got the money. In the Westchester case HUD was willing to tell the county that the obligation to meet the fair and affordable housing standards was serious—especially the requirement to "affirmatively further" those standards—and that HUD was ready to say "no more money" to people who skirt their obligations under HUD rules.

Fo.

But a bigger shoe fell more recently, closer to home. On May 25 HUD Secretary Shaun Donovan announced a settlement with the State of Texas enabling the state's \$1.7 billion dollar hurricane relief program to go forward, only after Texas agreed to spend \$152 million on fair housing and radically revamp its efforts to meet federal fair housing guidelines. The program had been stalled for six months after HUD objected to the way Texas Governor Rick Perry intended to spend HUD money.

Allen, the attorney for the plaintiffs in Westchester, also represented the plaintiffs who forced Perry to bow his neck on the hurricane money. Allen also represents Lockey and MacKenzie in the downtown Dallas matter.

Oh, fum!

In the meantime, HUD's new willingness to use its own clout is making it far easier for citizens to make their local governments obey HUD regs. In the Westchester case, which started pre-Obama, the plaintiffs had to stay in federal court for years to force a settlement. In the Texas hurricane relief case, there was no court case and things moved fast.

Two advocacy groups in Austin complained directly to HUD about the hurricane relief program. HUD

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Dallas City Hall Had Better Look Over Its Shoulder Because HUD Is Ready To Kick Some Fair-Housing B...

called state officials and told them to come to the table or face a cut-off of funding.

The direct complaint to HUD is the path Locky and MacKenzie have taken here. So are they fair housing angels? On the one hand, they do describe themselves as "social democrats" (small d) who believe that diversity makes communities smarter and more vibrant.

But they also claim to have lost up to \$30 million in the LTV Tower deal. They believe they were cheated out of that money—that Dallas City Hall faked its own financials and cut corners illegally to kill their deal.

The Westchester and Texas hurricane money settlements involve a principle that Locky and MacKenzie obviously hope will come into play in downtown Dallas as well. Sometimes called *qui tam* in the law, it winds up meaning that the people who start the ball rolling are acting in the government's interest and deserve a cut of whatever the government gets in the settlement.

If Locky and MacKenzie are angels, they're angels who want their 30 million bucks back. We might think of them as very pissed off angels.

So as I say, here I am at my desk drumming my fingers, smiling to myself. Listening. What is it that comes after *fee fi fo fum*? Something about, "I smell..."

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